



October 6, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Request of South Carolina Electric & Gas Company to Transfer Real Property; Obtain Certain Waivers Associated with Real Property Transfers; Approve the Use of Bill Inserts and Election of Bill Credit; and Request for Expedited Consideration;
Docket No. 2018-376-E

Dear Ms. Boyd:

As the Public Service Commission of South Carolina ("Commission") is aware, South Carolina Electric & Gas Company ("SCE&G") and SCANA Corporation entered into a November 23, 2018 settlement agreement and two subsequent addenda (collectively "the Settlement Agreement") to resolve all aspects of the litigation captioned *Lightsey v. SCE&G, et al.*, civil action no. 2017-CP-25-00335 known as the "Lightsey case" or "ratepayer litigation" resulting from the abandonment of the V.C. Summer Nuclear Station Units 2 and 3. SCE&G previously notified the Commission of the Settlement Agreement by filing dated November 30, 2018, in the above-referenced docket.

As part of the Lightsey case, Dominion Energy South Carolina, Inc.¹ ("DESC") previously sought approval from the Commission for certain real property transfers in furtherance of the Settlement Agreement. The Commission approved those requests by Order No. 2020-34 dated January 8, 2020, and Order No. 2020-325 dated May 5, 2020.

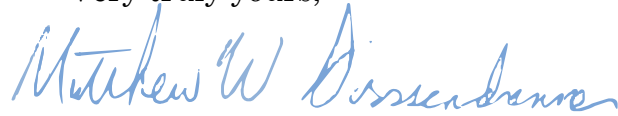
This letter is to notify the Commission that the circuit court entered an order approving final resolution of the Settlement Agreement. See Order Granting Final Resolution of Real Estate Matters attached hereto as Exhibit 1. The terms of the order maximize the cash benefits to the plaintiff consumers in the Lightsey case. DESC does not anticipate any appeal of that order, but should an appeal be initiated within the deadline, DESC will notify the Commission.

¹ Upon approval of Docket Nos. 2017-207, 305, and 370-E, SCE&G was renamed Dominion Energy South Carolina, Inc. effective April 29, 2019.

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If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



Matthew W. Gissendanner

MWG/kms
Enclosure

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	CASE NO.: 2017-CP-25-00335
)	
Richard Lightsey, LeBrian Cleckley,)	
Phillip Cooper, et al., on behalf of)	
themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
South Carolina Electric & Gas)	
Company, a Wholly Owned)	
Subsidiary of SCANA, SCANA)	
Corporation, and the State of)	
South Carolina,)	
)	
Defendants,)	
)	
South Carolina Office of Regulatory)	
Staff,)	
)	
Intervenor.)	
)	

**ORDER GRANTING APPROVAL OF
FINAL RESOLUTION OF REAL ESTATE MATTERS**

Before this Court is a Joint Motion by Plaintiffs Richard Lightsey, LeBrian Cleckley, Phillip Cooper, *et al.*, on behalf of themselves and all others similarly situated ("Plaintiff Class"); Defendants South Carolina Electric & Gas Company n/k/a Dominion Energy South Carolina, Inc. and SCANA Corporation ("Defendants"); Lightsey Real Estate Qualified Settlement Fund Trust ("Trust"); and Trustee and Special Master Donald R. Tomlin, Jr. ("Special Master/Trustee") (collectively "the Parties"), seeking approval for full and final resolution of any and all issues and/or disputes, whether known or unknown, contingent or otherwise, between Plaintiff Class,

Defendants, Trust, and Special Master/Trustee, related in any manner to the Trust and/or defined properties owned by Defendants (“the Properties”)(collectively “Disputes”).¹

On September 16, 2020, the Court held an in-camera hearing on the Joint Motion. Present at the hearing were Mr. Tomlin, in his capacity as Special Master/Trustee of the Trust; John R. Alphin and Whitney B. Harrison for Plaintiff Class; and Steven Pugh, Ben Carlton, and Bryony Hodges for Defendants.

BACKGROUND

By way of background, Plaintiff Class and Defendants entered into a Settlement Agreement on November 23, 2018, that included an award of Properties to be transferred and sold for the benefit of Plaintiff Class. Specifically, the Settlement Agreement provided for the creation of a Settlement Escrow Account, in which the cash of \$115 million²—the other portion of the Settlement—and the proceeds of the Sale of the Properties would be deposited for later transfer to Plaintiff Class. In total, Defendants agreed to provide Plaintiff Class with Properties with an estimated valued of at least \$60 million. At the final approval hearing, June 11, 2019, the Court approved Properties to be sold in a manner supervised by the Court or a Special Master/Trustee appointed by the Court.

The Court subsequently entered the Creation Orders, providing this Court would retain jurisdiction to oversee the Property transfer and to address any issue related to the Properties,

¹ Such terms (and others used herein) are defined and/or used in: (i) the Settlement Agreement, signed as of November 23, 2018, by Plaintiff Class and Defendants; (ii) the Consent Order Authorizing Creation of a Qualified Settlement Fund Trust, Appointing the Special Master, and Authorizing the Sale of Property, dated July 9, 2019, and filed July 11, 2019; and (iii) the Consent Order Establishing Procedures to Swap Properties and Granting Extensions of the Swap and Property Transfer Deadlines, dated and filed December 11, 2019 (collectively “Creation Orders”).

² Notably, the Settlement Agreement provided Plaintiff Class with a cash payment of up to \$2.115 billion but provided Defendants could receive a credit of up to \$2 billion for rate relief.

including Disputes. Additionally, the Court appointed Special Master/Trustee to oversee the selling and marketing of Properties to ensure that all Properties would realize their fair market value. In so doing, the Court authorized, order, and directed Special Master/Trustee to procure all necessary insurance, accept deeds, market Properties, conduct engineering, and environmental studies, and other necessary actions. *See* July 11, 2019 Creation Order for full list of duties. Special Master/Trustee testified to the Court at the Final Approval Hearing via Affidavit that following a diligent review of Properties he found the value of all Properties to be valued at more than \$60 million.

Further, the Creation Orders, as well as the Settlement Agreement terms, directed Defendants to transfer certain Properties to the Trust for the benefit of Plaintiff Class, and, in so doing, divided Properties into two lists—Exhibit A and Exhibit B. The Creation Orders also provided Plaintiff Class a mechanism to swap, Exhibit A Properties for Exhibit B Properties. To facilitate the Swap process, the Creation Orders included stated Swap Values for each Property, which were agreed to by Defendants and Plaintiff Class, in a compacted timeframe, as part of the Settlement. If a Swap was based on unequal Swap Values, Defendants were entitled to a credit for the resulting difference in Swap Value (the “Swap Value Credit”).

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8/15/20
For more than fourteen months, Special Mater/Trustee has worked diligently to evaluate, market, and sell the Properties. All of which has been supervised with guidance from this Court. Through these efforts, the Special Mater/Trustee has made notable progress.

This Court approved the sale of the following Properties, which have been fully consummated and closed (collectively “Sold Properties”): (1) A-9 Aiken Commercial Office,

Aiken County, effective as of July 11, 2019, for the purchase price of \$340,000³; (2) A-14 Freshly Shoals & Pollys Summer, Richland County, effective as of February 7 and 10, 2020, respectively, for the combined purchase price of \$900,000; (3) A-12 Otarre Village, Lexington County, effective as of May 6, 2020, for the purchase price of \$4,739,250; (4) A-13 Old State Road, Lexington County, effective as of May 7, 2020, for the purchase price of \$1,803,200; (5) A-3 Otarre Center (35.97 AC), Lexington County, effective as of June 15, 2020, for the purchase price of \$6,783,000; and (6) A-10 North Augusta Commercial Office, Aiken County, effective as of July 29, 2020, for the purchase price of \$400,000. The combined gross total of the proceeds from the Sold Properties is **\$14,965,450**.

Additionally, Defendants have transferred the following Properties to the Trust (collectively "Transferred Properties") and the values listed herein as expected are based on the Special Master/Trustee's evaluation: (1) A-4 Otarre Center (14 AC), Lexington County, having a Swap Value of \$2,700,000 and a current "expected value" of \$1,950,000; (2) A-5 Otarre Center (7 AC), Lexington County, having a Swap Value and current "expected value" of \$7,189; (3) A-7 Otarre Point, Lexington County, having a Swap Value of \$6,000,000 and a current "expected value" of \$5,250,000; and (4) A-8 Otarre Hills, Lexington County, having a Swap Value of \$4,000,000 and a current "expected value" of \$1,795,000. The combined total of the Swap Value for the Transferred Properties is **\$12,707,189**, while the combined total of the Special Master/Trustee's current "expected values" for the Transferred Properties is **\$9,002,189**.

Further, this Court has approved purchase and sale contracts for the following Properties, which will be transferred to the Trust (collectively "Approved Properties"): (1) B-1 Shakespeare

³ A-9 Aiken Commercial Office was sold prior to appointment of Special Master/Trustee; however, the proceeds received from the sale were contributed for the benefit of the Plaintiff Class and its Members.

Road, Richland County, for an approved sales price of \$1,300,000 and (2) B-5 Lincreek Drive, Lexington County, for an approved sales price of \$169,000. The combined total of the approved sales prices for the Approved Properties is **\$1,469,000**.

As part of these efforts, Defendants have accrued a Swap Value Credit in the combined amount of **\$752,960**, comprised of: (1) \$110,000 for the difference in Swap Value based on the Trust's transfer of Freshly Shoals & Pollys Summer (now identified as Property A-14) and Old State Road (now identified as Property A-13) to Exhibit A in exchange for Franklin Branch (now identified as Property B-9); and (2) \$642,960 for additional acreage contributed by Defendants for purposes of the sale of A-13 Old State Road.

Despite all of these efforts, substantial uncertainty has arisen due to the ongoing COVID-19 pandemic, along with numerous Disputes remaining between the Parties including: interpretation of Settlement terms, including, but not limited to, as related to potential contribution of additional properties; purported representations and/or guarantees made about Properties and/or corresponding sale values, individually and in the aggregate; the Parties' respective expectations as to the Properties and/or sales; Defendants' obligations throughout the process; deadlines for Properties to be swapped between Exhibit A and Exhibit B and the approval process to transfer Properties; costs and expenses of Properties throughout the process; payment obligations to third parties arising from the Properties, including a dispute as to brokerage commissions claimed by NAI Avant to be due and owing as a result of the sale of A-3 Otarre Center (35.97 AC), Lexington County, effective as of June 15, 2020 (the "NAI Avant Commission Dispute"); and locations and reservations of easements and similar, miscellaneous real estate matters.

ANALYSIS

Under the Parties' Settlement Agreement and the Creation Orders, the Court retains jurisdiction to address these Disputes, and to do so on behalf of the Plaintiff Class, without providing further notice to the Class Members and without impacting the validity or enforceability of the terms of the Settlement Agreement. To resolve these Disputes, the Parties jointly seek approval of a Final Payment by Defendants of \$38,500,000.00 to Plaintiff Class in lieu of additional property transfers. This Court has analyzed the benefit to Plaintiff Class by comparing the value of all prior, pending, and potential sales to the value and certainty of this payment. Moreover, all Parties will be able to enjoy full and final resolution of all issues and/or disputes, including the Disputes, related to the Real Estate portion of this underlying matter and prior Settlement Agreement in a timely and certain manner.

Turning to the comparison, as detailed *supra*, the properties from Exhibit A and B can be classified into four groups: Sold Properties, Transferred Properties, Approved Properties, and other properties not transferred. In total, the combined value of the Sold Properties, Transferred Properties at the Trustee's valuation, and Approved Properties amounts to \$25,436,639. Notably, Defendants have accrued a Swap Value Credit in the combined amount of \$752,960. Thereby, making the current recognized benefit to Plaintiff Class \$24,683,679.

Turning next to the properties available for sale, the remaining properties on Exhibit A have a combined remaining Swap Value of \$36,600,000.⁴ In evaluating the Swap Value to the appraisal value, the Special Master/Trustee testified as to each property providing an estimated sales price and the basis of that price, with reference to corresponding appraisals.

⁴ The four remaining properties on Exhibit A are: A-1 141 Meeting Street with a Swap Value of \$12,000,000; A-2 Ramsey Grove with a Swap Value \$10,000,000; A-6 Otarre Crossing with a Swap Value of \$9,500,000; and A-11 1409 Huger Street with a Swap Value of \$5,100,000.

First, as to 141 Meeting Street (A-1), the Special Master/Trustee testified there would be an estimated sales price of \$9,500,000. In making this assessment he relied on an appraisal from CBRE valuing the property at \$9,600,000.

Next, as to Ramsey Grove (A-2), Special Master/Trustee testified there would be an estimated sales price of \$9,500,000. He relied on the two appraisals (1) 12,800,000 by Charleston Appraisal Service and (2) \$14,000,000 by Appraisal Consultants. Notably, when discussing these two properties, the Special Master/Trustee estimated net cash flows from the sale of these parcels to yield a total of \$15,933,875 net of expenses and carrying costs.


As for Huger Street (A-11), the Special Master/Trustee testified that he estimated a sale price of \$3,750,000.00, which would yield \$3,338,000.00 for the Plaintiff Class after expenses. In support of his estimation, Mr. Tomlin provided the Court an appraisal by Carter Commercial Appraisal Group, Inc. valuing the property at \$4,100,000.00

Finally, as to Otare Crossing (A-6), Special Master/Trustee testified that while the Swap Value of the property was \$9,500,000 the property estimated value was nominal. Specifically, Special Master/Trustee explained that the property is severely limited by its location in a designated flood way and could not render a sales price to satisfy the Swap Value. Accordingly, he advised that the parcel would need to be swapped for a parcel from Exhibit B.

While making such a Swap was the intention of all Parties when establishing this swap mechanism, review of Exhibit B Properties demonstrates a deficiency that directly impacts Plaintiff Class. As it stands, the remaining Exhibit B Properties have a Swap Value of \$13,300,000, but an appraised value of \$6,770,000. Thus, creating a \$2,730,000 deficiency between the Swap Value of Otarre and the current, expected realizable value of the remaining properties on Exhibit B. Thereby making the complete appraised value of a revised Exhibit A

equal to \$33,870,000. Notably, this amount fails to account for the costs that would accrue during the marketing and carrying of the Properties and Swap Value Credits owed.

In total, the remaining Property values are less than the proposed Final Payment amount:



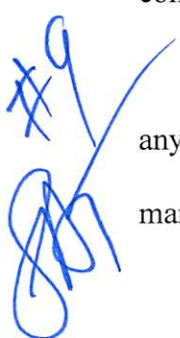
<u>PROPERTY</u>	<u>SWAP VALUE</u>	<u>APPRAISED VALUE</u>	<u>TRUST-RETAINED APPRAISER</u>
A-1 141 Meeting Street	\$12,000,000.00	\$9,600,000.00	CBRE
A-2 Ramsey Grove	\$10,000,000.00	\$12,800,000.00	Charleston Appraisal Service
		\$14,000,000.00	Appraisal Consultants Inc.
		\$13,400,000.00	Average
3. A-6 Otarre Crossing	\$9,500,000.00		
4. A-11 1409 Huger Street	\$5,100,000.00	\$4,100,000.00	Carter Commercial Appraisal Group, Inc.
TOTAL LIST A	\$36,600,000.00	\$27,100,000.00	
Wateree industrial site # 1- 300 acres	\$3,000,000.00	\$970,000.00	Carter Commercial Appraisal Group, Inc.
2. Givhans Ferry at Highway 61	\$2,880,000.00	\$700,000.00	CBRE
3. Canadys (Braidieu, Featherbed, Pleasant Grove)	\$6,500,000.00	\$5,100,000.00	CBRE
TOTAL LIST B	\$12,380,000.00	\$6,770,000.00	
	\$39,480,000.00	\$33,870,000.00	

This number does not account for the Swap Value Credit that would be owed, nor the additional costs that would be incurred, if a final resolution is not reached and the amount the Properties may yield if sold as the Special Master/Trustee testified. Specifically, Plaintiff Class would be subject to costs for continued marketing efforts, preparing Properties for sales to third parties, and the carrying costs prior to sale further reducing the net to the Plaintiff Class. For these reasons, the Joint Motion is **GRANTED**.

FINDINGS

This Court finds the combined gross total of the process from Sold Properties being **\$14,965,450**; Special Master/Trustee's current "expected values" for Transferred Properties being **\$9,002,189**; the combined total of the approved sales prices for Approved Properties being **\$1,469,000**; the waiver of the Swap Value Credit in the amount of **\$752,960**; and the payment by Defendants to Plaintiff Class of the Final Payment in the amount of **\$38,500,000**, the total gross value attributable to Trust, with regard to the Properties and the underlying terms and conditions of the Settlement and the Creation Orders, is **\$64,689,599**.

The Court further finds:

- 
- a. Plaintiff Class, Trust, and Special Master/Trustee have had the opportunity to consult with their respective attorney(s).
 - b. Plaintiff Class, Trust, and Special Master/Trustee have not assigned, pledged, or in any other manner sold or transferred any right, title, interest, or claim that arises out of, or is in any manner connected to, Final Payment, Disputes, and/or releases of any kind.
 - c. Counsel for Plaintiff Class have the capacity and authority to act on behalf of Plaintiff Class in connection with the Final Payment and the Disputes, without further notice to, or involvement of, Plaintiff Class.
 - d. Defendants have had the opportunity to consult with their attorney(s).
 - e. Defendants have not assigned, pledged, or in any other manner sold or transferred any right, title, interest, or claim that arises out of, or is in any manner connected to, the Final Payment, the Disputes, and/or releases of any kind.
 - f. The resolution of these Disputes and the entry of this Order is within this Court's retained jurisdiction to address and finalize matters affecting the Properties.

g. Upon entry of this Order, Defendants will have fulfilled and extinguished all outstanding obligations stemming from the Settlement Agreement, dated November 23, 2018, and shall have no further obligations pursuant to that agreement or the Creation Orders to Plaintiff Class, Special Master/Trustee, and/or the Trust, including no further obligations in any way related to the compensation afforded Plaintiff Class and its Members or the Properties contemplated for transfer for the benefit of Plaintiff Class and its Members in the Settlement Agreement.

h. The agreements contained in the Parties' Joint Motion reflects a compromise of all Disputes and claims; therefore, the payment of Final Payment, the terms contained in the Motion, and the Parties' other agreements are not and shall not be construed as an admission or concession of any issue of fact, liability, or law, for or against any Party.

As a result, it is ORDERED:

Final Payment; Receipt; No Other Payment

a. Defendants shall pay, in the currency of the United States, the total sum of **Thirty-Eight Million Five Hundred Thousand and No/100 (\$38,500,000.00) Dollars** to the Common Benefit Fund held by the Claims Administrator ("Final Payment"), which shall be made by wire transfer or check within twenty (20) days of this Order.

b. The Claims Administrator, or their counsel or authorized designee, shall promptly confirm the receipt of the Final Payment ("Receipt") to all counsel.

c. Aside from the Final Payment, no other payment, proceeds, or obligation, of any kind, are owed or shall be due to Plaintiff Class, Trust, or Special Master/Trustee from Defendants or their current or former parents, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, successors, or assigns.

The Transferred Properties

Trust shall retain title to Transferred Properties, along with all obligation and expense to maintain, market, and sell the Transferred Properties for the benefit of Plaintiff Class.

The Approved Properties

Within forty-five (45) days of this, the Trust shall take title to Approved Properties, “as is, where is” (unless otherwise expressly agreed by Parties), and thereafter Trust shall retain all obligation and expense to maintain, market, and sell Approved Properties for the benefit of Plaintiff Class.

The Swap Value Credit

Defendants shall have no right to claim any unsettled Swap Value Credit from the Plaintiff Class.

No Other Swap or Transfer of Property


Aside from the Sold Properties, Transferred Properties, and Approved Properties, previously set forth, Defendants shall retain all title and interest in and to—and shall have no further obligation whatsoever (including, but not limited to, pursuant to the terms of the Settlement and/or Creation Orders), to Plaintiff Class, Trust, Special Master/Trustee, and/or Court as to—the remaining Exhibit A Properties and Exhibit B Properties (“Remaining Properties”). Without limiting the foregoing, Plaintiff Class, Trust, and Special Master/Trustee shall have no further right or authority to Swap Properties; request or demand contribution, transfer, or other conveyance of the Remaining Properties or property not otherwise listed on Exhibit A or Exhibit B to the Creation Orders; or seek from Defendants reimbursement or other payment of expenses incurred.

**Releases, Disclaimers, Limitations of Liability, &
Similar Terms of Settlement and Creation Orders Incorporated**

All releases, disclaimers, limitations of liability, and similar terms provided for in the Settlement Agreement, dated November 23, 2018, and/or in the Creation Orders are incorporated by reference and remain fully effective and without limitation as to all Parties and, upon entry of this Order, shall extend to and cover the Disputes and the Properties in all respects.

The Parties shall bear their own costs and attorneys' fees and all other costs, fees, and expenses incurred with respect to their Joint Motion and the Disputes.

AND IT IS SO ORDERED this 16th day of September, 2020,



The Honorable Jean Hoefer Toal
Chief Justice Retired
Acting Circuit Court Judge